

# Exhibit A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LP MATTHEWS, L.L.C. )  
 )  
 Plaintiff, ) Civil Action No. 04-1507-SLR  
 )  
 v. )  
 )  
 BATH & BODY WORKS, INC.; LIMITED )  
 BRANDS, INC.; KAO BRANDS CO. )  
(f/k/a THE ANDREW JERGENS )  
 COMPANY); and KAO CORPORATION )  
 )  
 Defendants. )

**PLAINTIFF'S FEBRUARY 16, 2006 RESPONSES TO  
KBC'S FIRST SET OF INTERROGATORIES 1-8**

Plaintiff LP Matthews, L.L.C. provides the following responses and objections to Kao Brands Company's First Set of Interrogatories 1-8. LP Matthews will supplement these responses as required by the Federal Rules of Civil Procedure and the Local Rules and Orders of this Court.

**GENERAL OBJECTIONS**

LP Matthews has the following General Objections to Kao's Interrogatories.

A. LP Matthews objects to these interrogatories to the extent they impose obligations or requirements beyond those imposed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the District of Delaware, or the Orders of this Court.

B. LP Matthews objects to these interrogatories to the extent that they are vague, overly broad, unduly burdensome, not relevant to a claim or defense of any party, not reasonably calculated to lead to the discovery of admissible evidence, or otherwise exceed the scope of permissible discovery.

patent. On December 23, 2004, Robert A. Auchter, counsel for LP Matthews, sent a letter to William Gentner, Chief Executive Officer of Kao Brands Company. That letter provided notice to Kao of its infringement of the '062 patent and requested that Kao cease its infringing activities. On January 7, 2005, Arthur I. Neustadt replied to the notice letter on behalf of both Kao Brands Company and Kao Corporation. Mr. Neustadt requested additional information about LP Matthews' allegations of infringement. On January 12, 2005, LP Matthews provided the requested information showing that claim 6 of the '062 patent reads on Kao's accused Curél Ultra Healing product. Kao has not responded to LP Matthews' request that Kao cease its infringing activities.

At least as early as the date it received LP Matthews' December 8, 2004 Complaint attaching a copy of the '062 patent, Kao had actual knowledge of the patent and the alleged infringement. Kao's knowledge of the '062 patent and its continued infringement thereof formed the basis for the allegations stated in Paragraph 20 of the Amended Complaint, namely that Kao willfully, deliberately, and intentionally infringes one or more claims of the '062 patent, *e.g.* claim 6.

#### **INTERROGATORY NO. 2**

Identify each opinion of counsel with respect to the '062 patent and Kao's accused product.

#### **Response to Interrogatory No. 2**

LP Matthews incorporates its General Objection C.

#### **INTERROGATORY NO. 3**

Identify each claim of the '062 patent asserted to infringe and, as to each such claim, provide an element by element reading for each accused product.

**Response to Interrogatory No. 3**

LP Matthews incorporates its General Objections C and F. Subject to and without waiving these objections, LP Matthews responds that it asserts claims 6 and 9 of the '062 patent.

LP Matthews provides the following element-by-element claim charts for the four accused products:

Claim Element	Curél Ultra Healing Product
6. A skin cleaning composition for external use on human tissues, comprising	Kao's Ultra Healing product is, among other things, a cleaning composition for use on human skin.
orange oil,	Kao admits that its Ultra Healing product contains orange oil. Kao's Memorandum Supporting its Motion for Summary Judgment of Non-Infringement (DI Nos. 13 and 17) at 1-2, 4; Kao's Reply Memorandum Supporting its Motion for Summary Judgment of Non-Infringement (DI No. 21) at 1-2; <i>see also</i> LP Matthews' Response to Kao's Interrogatory No. 1-C; 000004-8, 000011.
a pharmaceutically acceptable moisturizer for human skin,	Kao's Ultra Healing product master formula list shows that Kao intentionally adds glycerin as an ingredient. DI No. 13 at Ex. 1 to Ex. B; <i>see also</i> LP Matthews' Response to Kao's Interrogatory No. 1-C; 000004-8, 000011.
an oat grain derivative product as an emulsifying agent,	Kao's Ultra Healing product master formula list shows that Kao intentionally adds Avena Sativa (Oat) Meal Extract as an ingredient. DI No. 13 at Ex. 1 to Ex. B; <i>see also</i> LP Matthews' Response to Kao's Interrogatory No. 1-C; 000004-8, 000011. LP Matthews believes that expert discovery will show that oat extracts, including the oat extract that Kao uses in this product, have an emulsifying effect.
wherein said composition has a pH within a range of 4.5 to 6.0, inclusively.	Kao admitted at the August 24, 2005 discovery status conference that its Ultra Healing product meets the pH claim limitation. <i>See</i> Transcript of August 24, 2005 Discovery Status Conference at 10-11; <i>see also</i> 000006, 000010, 000026.

<p>9. A cleaning composition for use on human skin comprising  forty-five percent (45%) or less by volume orange oil,  forty-five percent (45%) or less by volume of oatmeal,  and a pharmaceutically acceptable moisturizer.</p>	<p>Kao's Ultra Healing product is, among other things, a cleaning composition for use on human skin.  Kao admits that its Ultra Healing product contains 45% or less orange oil. Kao's Memorandum Supporting its Motion for Summary Judgment of Non-Infringement (DI Nos. 13 and 17) at 1-2, 4; Kao's Reply Memorandum Supporting its Motion for Summary Judgment of Non-Infringement (DI No. 21) at 1-2; <i>see also</i> LP Matthews' Response to Kao's Interrogatory No. 1-C; 000004-8, 000011.  Kao's Ultra Healing product master formula list shows that Kao intentionally adds 45% or less Avena Sativa (Oat) Meal Extract as an ingredient. DI No. 13 at Ex. 1 to Ex. B; <i>see also</i> LP Matthews' Response to Kao's Interrogatory No. 1-C; 000004-8, 000011.  Kao's Ultra Healing product master formula list shows that Kao intentionally adds glycerin as an ingredient. DI No. 13 at Ex. 1 to Ex. B; <i>see also</i> LP Matthews' Response to Kao's Interrogatory No. 1-C; 000004-8, 000011.</p>
---	--

Claim Element	Curél Extreme Care Facial Wash
<p>6. A skin cleaning composition for external use on human tissues, comprising</p> <p>orange oil,</p> <p>a pharmaceutically acceptable moisturizer for human skin,</p> <p>an oat grain derivative product as an emulsifying agent,</p> <p>wherein said composition has a pH within a range of 4.5 to 6.0, inclusively.</p>	<p>Kao's Extreme Care Facial Wash product is a cleaning composition for use on human skin.</p> <p>Kao's Extreme Care Facial Wash master formula list shows that Kao intentionally adds or added orange (<i>citrus aurnatium dulcis</i>) oil as an ingredient. 000042.</p> <p>Kao's Extreme Care Facial Wash master formula list shows that Kao intentionally adds glycerin as an ingredient. <i>Id.</i></p> <p>Kao's Extreme Care Facial Wash master formula list shows that Kao intentionally adds <i>Avena Sativa (Oat) Meal Extract</i> as an ingredient. <i>Id.</i> LP Matthews believes that expert discovery will show that oat extracts, including the oat extract that Kao uses in this product, have an emulsifying effect.</p> <p>Kao's Extreme Care Facial Wash finished product pH specification falls within the claimed range. 000045.</p>
<p>9. A cleaning composition for use on human skin comprising</p> <p>forty-five percent (45%) or less by volume orange oil,</p> <p>forty-five percent (45%) or less by volume of oatmeal,</p> <p>and a pharmaceutically acceptable moisturizer.</p>	<p>Kao's Extreme Care Facial Wash product is a cleaning composition for use on human skin.</p> <p>Kao's Extreme Care Facial Wash master formula list shows that Kao intentionally adds or added 45% or less orange (<i>citrus aurnatium dulcis</i>) oil as an ingredient. 000042.</p> <p>Kao's Extreme Care Facial Wash master formula list shows that Kao intentionally adds 45% or less <i>Avena Sativa (Oat) Meal Extract</i> as an ingredient. <i>Id.</i></p> <p>Kao's Extreme Care Facial Wash master formula list shows that Kao intentionally adds glycerin as an ingredient. <i>Id.</i></p>

Claim Element	Curél Extreme Care Body Cleanser
<p>6. A skin cleaning composition for external use on human tissues, comprising</p> <p>orange oil,</p> <p>a pharmaceutically acceptable moisturizer for human skin,</p> <p>an oat grain derivative product as an emulsifying agent,</p> <p>wherein said composition has a pH within a range of 4.5 to 6.0, inclusively.</p>	<p>Kao's Extreme Care Body Cleanser is a cleaning composition for use on human skin.</p> <p>Kao's Extreme Care Body Cleanser master formula list shows that Kao intentionally adds or added orange (<i>citrus aurnatum dulcis</i>) oil as an ingredient. 000047.</p> <p>Kao's Extreme Care Body Cleanser master formula list shows that Kao intentionally adds glycerin as an ingredient. <i>Id.</i></p> <p>Kao's Extreme Care Body Cleanser master formula list shows that Kao intentionally adds <i>Avena Sativa</i> (Oat) Meal Extract as an ingredient. <i>Id.</i> LP Matthews believes that expert discovery will show that oat extracts, including the oat extract that Kao uses in this product, have an emulsifying effect.</p> <p>Kao's Extreme Care Body Cleanser finished product pH specification falls within the claimed range. 000046.</p>
<p>9. A cleaning composition for use on human skin comprising</p> <p>forty-five percent (45%) or less by volume orange oil,</p> <p>forty-five percent (45%) or less by volume of oatmeal,</p> <p>and a pharmaceutically acceptable moisturizer.</p>	<p>Kao's Extreme Care Body Cleanser is a cleaning composition for use on human skin.</p> <p>Kao's Extreme Care Body Cleanser master formula list shows that Kao intentionally adds or added 45% or less orange (<i>citrus aurnatum dulcis</i>) oil as an ingredient. 000046.</p> <p>Kao's Extreme Care Body Cleanser master formula list shows that Kao intentionally adds 45% or less <i>Avena Sativa</i> (Oat) Meal Extract as an ingredient. <i>Id.</i></p> <p>Kao's Extreme Care Body Cleanser master formula list shows that Kao intentionally adds glycerin as an ingredient. <i>Id.</i></p>

Kao's Extreme Care Lotion has the same formulation as its Ultra Healing product. In addition, LP Matthews provides this claim chart:

Claim Element	Curél Extreme Care Lotion
6. A skin cleaning composition for external use on human tissues, comprising	Kao's Extreme Care lotion is, among other things, a cleaning composition for use on human skin.
orange oil,	Kao's Extreme Care lotion master formula list shows that Kao intentionally adds or added orange (citrus aurnatium dulcis) oil as an ingredient. 000001-5, 000007-8, 000011.
a pharmaceutically acceptable moisturizer for human skin,	Kao's Extreme Care lotion master formula list shows that Kao intentionally adds glycerin as an ingredient. <i>Id.</i>
an oat grain derivative product as an emulsifying agent,	Kao's Extreme Care lotion master formula list shows that Kao intentionally adds Avena Sativa (Oat) Meal Extract as an ingredient. <i>Id.</i> LP Matthews believes that expert discovery will show that oat extracts, including the oat extract that Kao uses in this product, have an emulsifying effect.
wherein said composition has a pH within a range of 4.5 to 6.0, inclusively.	Kao's Extreme Care lotion has the same finished product pH specification as its Ultra Healing product. 000006, 000010, 000026. Kao admitted at the August 24, 2005 discovery status conference that its Ultra Healing product meets the pH claim limitation. <i>See</i> Transcript of August 24, 2005 Discovery Status Conference at 10-11.

<p>9. A cleaning composition for use on human skin comprising forty-five percent (45%) or less by volume orange oil, forty-five percent (45%) or less by volume of oatmeal, and a pharmaceutically acceptable moisturizer.</p>	<p>Kao's Extreme Care lotion is, among other things, a cleaning composition for use on human skin. Kao's Extreme Care lotion master formula list shows that Kao intentionally adds or added 45% or less orange (<i>citrus aurantium dulcis</i>) oil as an ingredient. 000001-5, 000007-8, 000011. Kao's Extreme Care lotion master formula list shows that Kao intentionally adds 45% or less <i>Avena Sativa</i> (Oat) Meal Extract as an ingredient. <i>Id.</i> Kao's Extreme Care lotion master formula list shows that Kao intentionally adds glycerin as an ingredient. <i>Id.</i></p>
--	---

Neither Kao defendant provided its noninfringement contentions prior to the January 6, 2006 deposition of Kao Brands Company's Rule 30(b)(6) designee on that specific topic, which deprived LP Matthews of the opportunity to examine that witness on KBC's noninfringement contentions. Presently, neither Kao defendant has provided noninfringement contentions as previously directed by the Court. The Kao defendants are therefore estopped from disputing LP Matthews' proposed claim construction.

**INTERROGATORY NO. 4**

Identify each individual who tested the accused product for plaintiff.

**Response to Interrogatory No. 4**

LP Matthews incorporates its General Objections C and F. Subject to these objections, LP Matthews identifies the following individuals who tested products that LP Matthews alleges infringe one or more claims of the '062 patent:

- (a) Professor Edward Yeung, Iowa State University;
- (b) Patrick Ndungu, Drexel University; and